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**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEW JERSEY**

In re:

BED BATH & BEYOND, INC., *et al.*,  
  
Debtors.<sup>1</sup>

Chapter 11

Case No. 23-13359 (VFP)

(Jointly Administered)

**FEDERAL HEATH SIGN COMPANY LLC’S LIMITED OBJECTION TO DEBTORS’  
MOTION FOR ENTRY OF AN ORDER (I) AUTHORIZING THE SALE OF CERTAIN  
UNEXPIRED LEASES FREE AND CLEAR OF LIENS, CLAIMS, ENCUMBRANCES,  
AND OTHER INTERESTS; (II) APPROVING ASSUMPTION AND ASSIGNMENT OF  
CERTAIN UNEXPIRED LEASES; AND (III) GRANTING RELATED RELIEF**

Federal Heath Sign Company LLC (“Federal Heath”), by and through its undersigned counsel, hereby submits this limited objection (the “Objection”) to the *Debtors Motion for Entry of an Order (I) Authorizing the Sale of Certain Unexpired Leases Free and Clear of Liens, Claims, Encumbrances, and Other Interests; (II) Approving Assumption and Assignment of Certain Unexpired Leases; and (III) Granting Related Relief* (the “Motion”) (ECF No. 644). In support of the Objection, Federal Heath states as follows:

<sup>1</sup> The last four digits of Debtor Bed Bath & Beyond Inc.’s tax identification number are 0488. A complete list of the Debtors in these chapter 11 cases and each such Debtor’s tax identification number may be obtained on the website of the Debtors’ claims and noticing agent at <https://restructuring.ra.kroll.com/bbby>.

### **BACKGROUND**

1. Federal Heath sold goods and provided services to the Debtors<sup>2</sup> relating to exterior and interior signage and maintenance for Debtors' store locations.

2. Prior to the bankruptcy filing, Federal Heath recorded mechanics' liens on certain of Debtors' leasehold interests, including a mechanic's lien recorded against Bed Bath & Beyond Inc.'s leasehold interest in the premises at 825 West Montauk Highway, West Babylon, NY 11704 (the "West Babylon Leasehold") in the amount of \$36,472.18. A true and correct copy of Federal Heath's recorded mechanic's lien on the West Babylon Leasehold is attached hereto as Exhibit 1.

3. On June 7, 2023, the Debtors filed the Motion seeking to assume, assign, and sell certain leasehold interests, including the West Babylon Leasehold, to Burlington Coat Factory Warehouse Corporation and certain of its affiliates free and clear of all liens and encumbrances pursuant to 11 U.S.C. § 363(f).

4. The Motion identifies a cure amount of \$162,106 (the "Proposed Cure Amount") which Federal Heath understands does not include its lien amount.

5. Federal Heath and the Debtors have been in discussions in attempt to address Federal Heath's concerns but as of the date of this Objection, the parties have been unable to reach a resolution.

### **LIMITED OBJECTION**

6. Federal Heath objects to the Motion because the Proposed Cure Amount does not include payment of Federal Heath's mechanic's lien on the West Babylon Leasehold and does

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<sup>2</sup> Capitalized terms not defined in this Objection shall have the meaning ascribed to them in the Motion.

not provide Federal Heath with adequate protection for the sale of the West Babylon Leasehold free and clear of its mechanic's lien.

7. The Debtors cannot assume or assign the West Babylon lease unless it first cures all defaults, which would include the recording of a mechanic's lien. *See* 11 U.S.C. § 365(b)(1)(A). Furthermore, the Debtors cannot sell the West Babylon Leasehold free and clear under section 363(f) without providing Federal Heath adequate protection. *See* 11 U.S.C. § 363(e) and (f). The Motion does not offer Federal Heath any specific adequate protection. While there is a general statement in the Motion that “any such Interests will be adequately protected by either being paid in full at the time of closing . . . or by having it attach to the net proceeds of the sales”, there is nothing in the Motion that specifically identifies Federal Heath as an “Interest” holder or promises it any stated treatment.

8. Accordingly, Federal Heath objects to the Motion unless the Debtors agree to pay Federal Heath \$36,472.18 in cure costs on account of its validly filed mechanic's lien or otherwise provide appropriate adequate protection to Federal Heath for the extinguishment of its lien.

Dated: June 21, 2023

**SMITH GAMBRELL & RUSSELL**

By: /s/ Clayton D. Harvey  
One of Its Attorneys

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- AND -

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*\*Pro hac vice* application forthcoming

*Counsel for Federal Heath Sign Company LLC*

**CERTIFICATE OF SERVICE**

I, Clayton D. Harvey, hereby certify that on June 21, 2023, I caused a true and correct copy of the foregoing *Federal Heath Sign Company LLC's Limited Objection to Debtors' Motion for Entry of an Order (I) Authorizing the Sale of Certain Unexpired Leases Free and Clear of Liens, Claims, Encumbrances, and Other Interests; (II) Approving Assumption and Assignment of Certain Unexpired Leases; and (III) Granting Related Relief*, to be filed with the Court and served electronically through the Court's ECF System.

/s/ Clayton D. Harvey